

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of December 21, 2021 by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, acting by and through **LOUISVILLE FORWARD**, with an office located at 444 S. Fifth St., Suite 600, Louisville, Kentucky 40202 (“Metro”) and **UPPT, LLC**, a Kentucky limited liability company, with its principal office at 731 Brent Street, Suite 3200, Louisville, Kentucky 40204 (“Developer”).

RECITALS

WHEREAS, Metro desires to promote and encourage the revitalization of the Paristown neighborhood; and

WHEREAS, Metro owns property located at 810 Barret Avenue, 850 Barret Avenue, and 1235 E. Breckinridge Street, known as the Urban Government Center, as more particularly described in Exhibit A to this Agreement (collectively, the “Metro Property”); and

WHEREAS, the Louisville Metro Housing Authority (“LMHA”) owns property located at 768 Barret Avenue, as more particularly described in Exhibit B to this Agreement (the “LMHA Property,” and collectively with the Metro Property, the “Property”); and

WHEREAS, Metro issued a solicitation of interest on June 4, 2020, soliciting proposals for the redevelopment of the Property (the “SOI”); and

WHEREAS, Developer submitted one of the responses to the SOI, which proposed to redevelop the Property for a mixed-use project (the “Project”), as further described in the SOI response attached hereto as Exhibit C and incorporated herein by reference (the “Plan”); and

WHEREAS, Developer’s response was ultimately selected for further negotiation on August 18, 2021; and

WHEREAS, Metro has determined that it is in the best interests of Metro that Developer develop and construct the Project and that the development of the Project shall be in the furtherance of the public purposes of Metro in that the Project, when completed, will enhance the economic vitality of Metro Louisville, increase property values and employment, and help to create equity;

WHEREAS, because of the importance of the Project to the economic vitality of Metro, Metro agrees to provide support to Developer in accordance with the terms of this Agreement; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

ARTICLE I

COVENANTS AND UNDERTAKINGS OF DEVELOPER

Section 1.01. Construction of Project. Developer agrees to use commercially reasonable efforts to develop a phased approach to satisfy the contingencies set forth herein in order to construct the Project on the Property, in conformity with the Plan and in accordance with the terms and conditions of Article I of this Agreement.

Section 1.02. General Obligations. Developer shall undertake the following actions with respect to the Project:

- A. Refine sources and uses to more specifically reflect Developer's other sources of financing.
- B. Negotiate with LMHA to enter into an Option Agreement for the LMHA Property.
- C. Commence the activities listed on the Project Schedule attached to this Agreement as Exhibit D (the "Schedule").
- D. Enter into a Community Benefits Agreement with surrounding neighborhood associations (the "Community Benefits Agreement") as a condition of the sale of the Metro Property for below market rate.

Section 1.03. Schedule: Term of this Agreement.

A. During and potentially after the Contingency Period, Developer acknowledges that time is of the essence and agrees to adhere to the Schedule. So long as Developer is in substantial compliance with the Schedule and subject to delays caused by Force Majeure, this Agreement shall remain in effect.

B. Developer shall use its best efforts to comply with the Schedule and shall provide Metro with monthly updates regarding its progress on the Schedule.

C. The Project shall be designed and constructed in accordance with the terms of this Agreement. All construction at the Project shall be in a good and workmanlike manner. Developer shall verify that all construction on the Project shall be in accordance with the plans and renderings prepared pursuant to Article I of this Agreement.

D. Any provision of the Agreement to the contrary notwithstanding, if Developer is delayed in the construction of the Project by reasons of Force Majeure, or another cause which Metro and Developer agree is reasonably justifiable, the date of completion of the Actions in this Section to be performed by Developer shall be extended by Metro as provided in Section 4.06.

E. Metro, its agents and employees, shall be granted a right of entry upon the Project at reasonable times upon twenty-four (24) hours' notice during construction of the Project to enable Metro to inspect construction of the Project through the course of construction, although Metro shall have no obligation to do so. In exercising the foregoing right, Metro, its agents and employees shall not in any way interfere with the construction of the Project and shall abide by reasonable safety precautions required by Developer's construction manager.

Section 1.04. Design and Approval.

A. Developer shall submit for Metro's approval in connection with any zoning or site approvals, contemplated final plans and renderings for the proposed plans of the Project, which plans shall be, to the greatest extent possible, consistent with the items identified as 10-A, 10-B, 11, 12, 13 and 14 on the Area Map Key of the Plan, as those items are more particularly described in the Plan. At appropriate points throughout the Term, Developer shall submit proposed plans to Metro for its review and comment, which comments shall be included in the contemplated final plans and renderings in Developer's sole discretion. This paragraph shall be interpreted in congruence with the Schedule.

B. The Plan, any proposed plans for the Project as amended, schematics, drawings and other plans, (collectively, the "Work") are and shall remain the sole and exclusive property of Developer, and by entering into this Agreement, Metro is not acquiring any license, property right, or other legal or equitable interest in the Work and Metro may not copy, distribute or use the Work in any way without the express written consent of Developer, except to the extent that Metro is obligated to meet the requirements of the Kentucky Open Records Act.

Section 1.05. Contingency Period. Developer shall have 270 days from the date of this Agreement to satisfy itself with the condition of the Property for the Project, including evaluating title, zoning, parking and access, environmental, subsurface and any other conditions that would affect Developer's ability to construct the Project (the "Contingency Period"). During the Contingency Period, Developer shall have the right to enter the Property for the purpose of performing evaluations of the Property's environmental and subsurface conditions. Developer shall also use the Contingency Period to obtain land use approvals (including, but not limited to, rezoning, conditional use permit, variance or waiver) for the Project. Should Developer determine in its sole and absolute discretion that the condition of the Property is unsatisfactory or that it cannot obtain land use approvals sufficient to allow the Project, then it shall notify Metro of same in writing and this Agreement shall be terminated.

Section 1.06. Tax Increment Financing. Developer agrees to work with Metro to provide sources and uses and other financial information that Metro may reasonably require showing that the "but for" requirement contained in KRS 65.7049(4)(a) has been satisfied. If Metro agrees that such requirement has been satisfied, Metro shall work with Developer to cause a local ad valorem tax increment financing ("TIF") ordinance to be considered by the Legislative Council of Louisville/Jefferson County Metro Government ("Metro Council"). Such TIF ordinance would include the Property, and, if appropriate, additional property to be developed by the Developer at 814 Vine Street, in the proposed development area. The parties acknowledge that there is an expectation that a project with a residential component seeking tax increment will provide at a minimum 10% of the units at a rent that meets the 80% gross rent limit for the applicable size unit for the Louisville KY-IN HUD Metro FMR Area AMI and that those units are rented to income-eligible units.

Section 1.07. Purchase of Metro Property. Developer agrees to purchase the Metro Property from Metro at the Property Closing in accordance with the terms of Section 2.03 of this Agreement.

Section 1.08. Utilities, Taxes and Assessments. Following the Property Closing for the Metro Property (and any closing on the LMHA Property), Developer shall be responsible for the payment of any and all utility charges to the Project, insurance premiums and any and all taxes, fees or assessments levied upon and applicable to the Project by any governmental authority. Developer covenants to promptly pay all utility charges, insurance premiums, and any taxes, fees or assessments levied upon the Project applicable to the Metro Property and/or LMHA Property.

Section 1.09. Development and Construction. Developer shall construct the Project on the Property in a manner that is substantially similar to the plans approved pursuant to Section 1.04. The Project may be undertaken by Developer in several phases in accordance with the terms and conditions of this Agreement.

Section 1.10. Labor Requirements. Developer shall make good faith efforts to satisfy the following goals during construction of the Project, consistent with Louisville Metro Code of Ordinances (LMCO) 37.75:

A. A measurable and documented goal of at least 20% minority participation, including minorities and certified minority owned businesses, for all contractors employed on the Project.

B. A measurable and documented goal of at least 5% women participation, including females and certified female owned businesses, for contractors employed on the Project.

C. A measurable and documented goal that at least 75% of the Project jobs are given to residents of the entire county or all counties within the Louisville MSA.

It is expressly acknowledged and agreed between the parties that any failure by Developer to meet these participation goals, as long as Developer made good faith efforts, shall not constitute a default under this Agreement.

Section 1.11 Operation and Maintenance of Project. Upon completion of the Project, Developer agrees to comply with the provisions of this Section 1.11. Developer recognizes and acknowledges that the manner in which the Project is used and operated is critical to Metro by reason of the impact that the Project will have. In order to give Metro assurance as to the manner in which the Project will be used and operated, Developer covenants and agrees that, at no cost to Metro, it shall develop and manage the Project in a first-class manner, including (a) making reasonable efforts to market, or cause others to market, the Project by appropriate promotions and advertising of a first-class nature; (b) keeping the Property, its exterior and all furniture, fixtures, HVAC systems, equipment and other personal property in good repair and condition, (c) complying with all laws, ordinances, regulations and codes applicable to Developer's operations; (d) obtaining and maintaining, or causing others to obtain and maintain, all appropriate or required

licenses and permits required for the operation of the businesses located in the Project, (e) using commercially reasonable efforts to cause each tenant of the Property to comply with the operational standards set forth in this (a) through (e) of this Section.

Section 1.12. Codes. The Actions and any work performed pursuant to this Agreement shall comply with all federal, state and local codes, ordinances, statutes and regulations.

Section 1.13. Employment Regulations: Affirmative Action. Developer, its contractors and subcontractors, shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color, national, origin, sexual orientation or disability. At all times during the contemplated remediation performed pursuant to the Plan, Developer shall take affirmative action to ensure that its employees and the employees of its contractors and subcontractors are treated in a non-discriminatory fashion during employment, without regard to their sex, race, creed, color or national origin. This requirement shall apply to, but not be limited to, the following: employment; promotion; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training.

Section 1.14. Liens. Developer will keep the Project free and clear of all mechanics' and materialmen's liens and other liens on account of work done for Developer or persons claiming under Developer. Should any such lien be filed against the Property, Developer shall pay, bond over, or otherwise remove such lien within sixty (60) days of it being provided written notice thereof. Should Developer elect to dispute the amount required to release such lien or the quality of service provided by the contractor who placed the lien, Developer shall have the right to provide a bond against such lien in form and content acceptable to Metro, which acceptance shall not be unreasonably withheld, delayed or conditioned.

Section 1.15. Non-Discrimination. Upon completion of the Project and as applicable, Developer agrees to not discriminate on the basis of race, sex, creed, disability, sexual orientation or national origin, in the sale lease, rental use or occupancy of the commercial or residential units on the Property.

Section 1.16. Insurance. Developer shall provide all insurance as required by Metro's Risk Management Department as is more particularly described on Exhibit E, attached hereto and made a part hereof.

Section 1.17. Security. Developer agrees to furnish reasonable and customary security for the work site or sites located on the Property during remediation and construction.

Section 1.18. Budget. In accordance with the Schedule, Developer shall submit to Metro a reasonably detailed budget for remediation, development and construction of all buildings and components of the Project, including landscaping, sufficiently detailed to enable Metro to determine if the budget is reasonable and sufficient to enable the Project to be constructed in accordance with the terms of this Agreement and the Plan (the "Plan Budget"). Metro will endeavor to support Developer in determining Developer's eligibility for appropriate tax increment financing, as well as other funding opportunities, subject to funding availability and award of same.

Section 1.19. Developer Financing. In accordance with the Schedule, Developer shall furnish to Metro written evidence of private or public financing commitments in an amount sufficient to complete construction of the Plan. Such commitments may include pledges of federal or state funds for future fiscal years.

Section 1.20. Indemnification. Developer agrees to indemnify and hold Metro and its officers, employees and agents ("Metro Parties") harmless from and against any and all claims, demands, suits, proceedings, judgments, losses, liability, damages, costs and expenses of every kind and nature (including, but not limited to, reasonable and actual attorneys' fees) imposed upon or incurred by the Metro Parties as a result of or in connection with any of the following:

A. Any misrepresentation or breach of warranty made by Developer in this Agreement or in any agreement or instrument executed by it in connection herewith or pursuant hereto.

B. The breach of or default in the performance of any covenant, agreement or obligation to be performed by Developer pursuant to this Agreement or any agreement or instrument executed by it in connection herewith or pursuant thereto, or

C. Any claim, damage, loss or expenses, attributable to personal injury or to destruction or loss of use of property, including, but not limited to, liability expenses or damages (determined to have been caused by Developer and not pre-existing or caused by the negligent act or omission of the Metro Parties), that is attributable to or results from the presence or release of any Hazardous Materials or that arises from the negligent or intentional act or omission of Developer or its agents, contractors, employees, licensee, or invitees, in carrying out its obligations under this Agreement. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any applicable federal, state or local governmental agency or authority. The term "Hazardous Materials" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC Section 1317), (iv) identified as a "hazardous waste" pursuant to Section 1004 of the Federal Resource and Recovery Act (42 USC Section 6903), (v) defined as a "hazardous substance" pursuant to Section 101(14) of the Comprehensive Environmental Response and Liability Act ("CERCLA") (42 USC Section 9601) or (vi) defined as a "pollutant" or contaminant" pursuant to Section 101(33) of CERCLA.

Section 1.21. Environmental Testing and Remediation. Developer, at its expense, shall be solely responsible for performing any environmental testing to determine whether hazardous materials are present in, on, or under the Property and, at its expense, to conduct any remedial measures or management of the hazardous materials disclosed by the environmental testing as may be required by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (the "Cabinet") or other local, state or federal agency (the "Remedial Measures"). Metro shall provide any documents in its possession relevant to the Metro Property at the request of Developer. Metro shall cooperate with, and assist, Developer in any negotiations with the Cabinet

concerning Remedial Measures and agrees to use its best efforts to enable Developer to expeditiously obtain all necessary approvals from the Cabinet.

Section 1.22. Project Advisory Group. Developer shall use good faith efforts to work with the Project Advisory Group identified by Louisville Forward to provide for resident engagement throughout the development of the Project. Developer shall schedule regular meetings with the Project Advisory Group to keep the group informed of progress, changes and construction staging.

Section 1.23. Additional Representations and Covenants of Developer. Developer represents and covenants as follows:

A. Developer is a Kentucky limited liability company, duly formed and validly existing under the laws of the Commonwealth of Kentucky with the power and authority to enter into this Agreement.

B. Developer is not a “foreign person” as that term is defined in Section 1445 of the Internal Revenue Code, and applicable regulations.

C. Developer has not made any untrue statement of a material fact or failed to state a material fact in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms hereof.

D. The execution of this Agreement, and the actions contemplated herein by Developer will not violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to Developer.

E. There are no actions, suits or proceedings pending or threatened against Developer which would, if adversely determined, affect Developer’s ability to enter into this Agreement or construct the development in accordance with this Agreement.

ARTICLE II

COVENANTS AND UNDERTAKINGS OF METRO

Section 2.01. Developer Representation. Developer represents that it would not enter into this Agreement to construct the Project but for the commitment of Metro to provide financial and other incentives to the Project, as provided in this Agreement, to induce Developer to undertake the Project pursuant to this Agreement.

Section 2.02. Metro Obligations. Subject to the terms and conditions of this Agreement, Metro shall (i) support Developer in determining Developer’s eligibility for appropriate tax increment financing, as well as other opportunities, subject to funding availability and award of same, (ii) use reasonable effort to facilitate meetings between Metro agencies and other non-profit entities affiliated with Metro upon receipt of request from same from Developer (should Metro be unable to facilitate said meetings, then Developer should be able to arrange such meetings directly), and shall use commercial reasonable, good faith efforts to adhere to the Schedule.

Section 2.03. Conveyance of Metro Property.

A. Upon the satisfaction of the Conditions Precedent in ARTICLE III of this Agreement (other than the condition set forth in Section 3.02.A.5), Metro shall convey, by deed of special warranty, fee simple title to the Metro Property to Developer (the "Property Closing"). The Property Closing shall occur at such time requested by Developer upon written notice to Metro delivered not less than one (1) week prior to the proposed Property Closing. The Property Closing shall be held at 444 South Fifth Street, Sixth Floor, Louisville, Kentucky, or at such other place as is mutually agreed to by Developer and Metro. In consideration of the environmental remediation to be performed by Developer and the Community Benefits Agreement, the sales price for the Metro Property shall be one dollar (\$1.00).

B. At the Property Closing, Metro shall convey title to the Metro Property to Developer as stated in subparagraph A of this Section by deed of special warranty free and clear of all liens and encumbrances, except for the (1) all ad valorem property taxes and assessment, if any, not yet due and payable, (2) easements, restrictions and stipulations that appear of public record, and (3) governmental laws and regulations affecting the Metro Property (collectively, the "Permitted Encumbrances"). The Metro Property shall be conveyed by Metro to Developer "as is," "where is" with no warranties of any kind, except for the special warranty of title contained in the deed and except as otherwise provided in this Agreement. Metro shall pay the transfer tax, if any, on the conveyance of the Metro Property. Developer shall pay the recording fees imposed for recording the Deed. All utilities and other operating expenses associated with the Metro Property shall be borne by Metro through the Property Closing. Each party shall bear its own legal and other expenses associated with the transaction.

Section 2.04. General Assistance. Metro shall use all commercially reasonable efforts to assist Developer, to the extent requested thereby, in obtaining all permits and approvals that are sought by Developer in connection with the development, construction, operation and maintenance of the Project as contemplated by this Agreement. In addition, Metro, to the extent necessary, shall:

A. Execute all necessary and appropriate applications and other documentation for, and otherwise assist Developer in pursuing, any changes to or variances of the zoning ordinance, or other land use ordinances, deemed necessary or appropriate by Developer in order to accommodate the development of the Project as contemplated by this Agreement; and

B. Execute all necessary and appropriate applications and other documentation for, and otherwise assist Developer in applying for any and all governmental approvals or permits that are necessary or desirable to carry out the development of the Project as contemplated by this Agreement.

Section 2.05. Access. From and after the Effective Date, Metro shall permit Developer and its respective contractors, consultants and invitees, to enter upon the Metro Property for all desired inspections of the Metro Property and otherwise in connection with matters relating to the Project.

Section 2.06. Additional Representations, Covenants and Agreements of Metro.

Metro represents and covenants as follows:

- A. Metro is a Kentucky consolidated local government established pursuant to KRS 67C and possesses the requisite authority to enter into this Agreement.
- B. Metro has not made any untrue statement of a material fact or failed to state a material fact in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms hereof.
- C. There are no actions, suits or proceedings pending or threatened against Metro that would, if adversely determined, affect Metro's ability to enter into this Agreement or perform its obligations in accordance with this Agreement.

ARTICLE III

MUNICIPAL APPROVALS; CONDITIONS PRECEDENT

Section 3.01. Municipal Approvals. The obligations contained herein for Developer to construct the Project shall be contingent upon the parties obtaining the following approvals and/or eliminating the following conditions (collectively, the "Municipal Approvals"):

- A. LMHA and Developer shall have executed an Option Agreement for the LMHA Property;
- B. Metro Council, by resolution duly enacted, shall have declared the Metro Property surplus to the needs of Louisville Metro and authorized the conveyance of the Metro Property to Developer;
- C. Any and all historical designations and/or legal impediments relating to historical structures on the Property have been removed or expired so as to allow the demolition of all existing structures on the Property and the construction of the Project to proceed in a manner agreed to by the parties to this Agreement. This paragraph includes the structures and improvements on the Property and their potential designation as local landmarks, pursuant to Louisville Metro Codified Ordinances, Chapter 32.
- D. Metro Council shall have enacted an ordinance creating a TIF for the proposed development area contemplated in Section 1.06 of this Agreement.
- E. The rezoning of all portions of the Property to a classification consistent with the Plan and Project, shall be final and non-appealable.

The Municipal Approvals must be obtained in accordance with the Schedule, provided however, that if any legislative or administrative approval has not been formally obtained by the date set forth in the Schedule, but is pending before the appropriate administrative or legislative body and the parties reasonably anticipate that final approval will be obtained in a reasonable time,

Developer will extend the time for such Municipal Approval until the expected date of final approval and in such event, all other dates and deadlines in this Agreement dependent upon such deadline shall be extended on a day for day basis from the original date until such approvals have actually be obtained.

Section 3.02. Conditions Precedent. The obligation of the parties to undertake the Project and to undertake their respective obligations set forth herein shall be contingent upon the satisfaction or the waiver of the following conditions precedent.

A. Developer Conditions Precedent. Developer shall be under no obligation to construct the Project unless the following conditions have been satisfied or waived in Developer's sole discretion.

1. All of Metro's representations and warranties shall remain true and correct and Metro shall have duly performed all of its obligations to be performed by that time under the Agreement.
2. The Municipal Approvals shall have been obtained and shall remain in full force and effect.
3. The Metro Property shall have been conveyed to Developer.
4. Metro shall have approved the plans and specifications in accordance with Section 1.04 of this Agreement.
5. Developer shall have received a notice of eligibility (if applicable) from the Commonwealth of Kentucky under the Brownfield Redevelopment Act.
6. Developer shall have obtained, at its sole expense, a title commitment from a title insurance company showing that the Metro Property is owned by Metro in fee simple unencumbered insurable market title except for Permitted Encumbrances and such other exceptions reasonably acceptable to Developer.
7. Developer shall have obtained all permits required to commence construction of the Project

B. Metro Conditions Precedent. Metro shall be under no obligation to convey the Metro Property to Developer unless the following conditions have been satisfied or waived by Metro.

1. All of Developer's representations and warranties shall remain true and correct and Developer has duly performed all of its obligations to be performed under this Agreement.
2. The Municipal Approvals shall have been obtained and shall remain in full force and effect.
3. Developer shall have furnished to Metro a budget for the construction of the Project that is sufficient to construct the Project in accordance with the terms of this Agreement.

4. Metro shall have received satisfactory evidence that Developer has obtained sufficient financing, either equity or debt, to fully pay for the cost of the Project.
5. Metro shall have approved the plans and specifications in accordance with Section 1.04 of this Agreement.
6. Developer shall have entered into the Community Benefits Agreement with surrounding neighborhood associations.
7. Metro shall have received such other documents as it may reasonably request for the purpose of (i) evidencing the accuracy of any representation or warranty of Developer, (ii) evidencing the performance by Developer of, or the compliance by Developer with, any covenant or obligation required to be performed or complied with prior to commencement of construction of the Project by Developer, or (c) evidencing the satisfaction of any condition precedent referred to in this Section.

C. Within thirty (30) days of the satisfaction or waiver of the Developer Conditions Precedent and the Metro Conditions Precedent set forth in subparagraphs A and B of this Section, respectively:

1. Metro shall convey the Metro Property to Developer; and
2. Developer shall commence or cause to be commenced construction of the Project.

D. This Agreement shall automatically terminate and be of no further force and effect if the Conditions Precedent set forth in Section 3.02(A) and (B) have not satisfied or waived on or before December 31, 2022 (the "Contingency Deadline"). Notwithstanding the foregoing, the Contingency Deadline may be further extended by either (i) an event of force majeure or (ii) mutual agreement of the parties.

ARTICLE IV **MISCELLANEOUS**

Section 4.01. Provisions not Merged with Deeds and Other Agreements. This Agreement shall not terminate upon the execution of any lease or deeds required by this Agreement, and the provisions of this Agreement shall not be deemed to be merged into such lease or deeds.

Section 4.02 Governing Law. This Agreement, the construction thereof and the rights and obligations of the parties hereunder shall be governed in all respects by the laws of the Commonwealth of Kentucky.

Section 4.03. Severability. Each and every provision hereof, including Articles, Section, and Subsections shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability or illegality of any such provision shall not affect the enforceability of any other provision hereof.

Section 4.04. Section Headings and Captions. The Section headings and captions in this Agreement are for convenience of reference only and shall not affect the construction of the terms and provisions hereof.

Section 4.05. Time of the Essence; Mutual Extension; Diligent Performance. Time is of the essence with respect to the duties and obligations imposed on the parties hereto. Where any time for performance or otherwise is set forth herein, such time may be extended by mutual agreement of Metro and Developer. With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement or performance thereof.

Section 4.06. Force Majeure. In the event that Developer shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials which could not have been reasonably anticipated and avoided by Developer, failure of power, riots, insurrection, war or the act, failure to act or default of the other party, including delays in financing, then performance of such act shall be extended for a period equivalent to the period of such delay ("Force Majeure"). Other than delays caused by supply chain issues related to the acquisition of materials, delays or restrictions imposed as a result of the Covid-19 pandemic shall not be considered Force Majeure under this Agreement; provided that, in the event of any restrictions or prohibitions caused or ordered by Metro that would reasonably prohibit Developer from performing under this Agreement, Developer's performance shall be extended for a period equivalent to the period of such restriction or prohibition. Developer shall provide Metro with notice of any such delay in writing no later than thirty (30) days following the delay's commencement.

Section 4.07. Notices. Whenever a notice is required or permitted to be given to a party hereunder, such notice shall be in writing and shall be deemed to have been made when hand delivered or two (2) business days after being deposited in the United States mail, certified or registered mail return receipt requested, postage prepaid, addressed to the parties, or to such other address or to such other persons as any party shall have requested by notice to the other(s) pursuant to this Section, as follows:

If to Developer: UPPT, LLC
 731 Brent Street
 Louisville, KY 40204
 Attn: Steve Smith
 Phone: 502-582-1900
 Ssmith@paristown.com

Copy to: _____

If to Metro: Louisville Forward
Department of Economic Development
444 South Fifth Street, Suite 600
Louisville, Kentucky 40202
Attn: Jeff O'Brien
Phone: 502-574-4140

Copy to: Jefferson County Attorney
First Trust Centre
200 S. Fifth Street, Suite 300N
Louisville, Kentucky 40202
Attn: Laura Ferguson
Phone: 502-574-0129

Section 4.08. Entirety of Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement of the parties with respect to the matters set forth herein, and all prior agreements and understandings, between Metro and Developer, are merged herein. The Exhibits to this Agreement constitute a material part hereof and are incorporated by reference herein. This Agreement may not be modified, amended or revoked, except in writing, executed by each of the parties.

Section 4.09. Brokers and Finders: Fees and Expenses. Each of the parties hereto represents and warrants to the others that it has engaged no broker or finder in connection with the negotiation of this Agreement, and each party indemnifies and holds the other harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor. Each party hereto shall bear its own respective expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Agreement and consummation of the transactions contemplated hereby, except as mutually agreed to by the parties. Each party hereto is indemnified and holds the others harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor.

Section 4.10. Successor and Permitted Assigns for the Parties Hereto. Developer shall not assign or transfer any interests under this Agreement without the prior written consent of Metro, provided that Developer may transfer its interest under this Agreement to: (a) any entity wholly owned or controlled by Developer; or (b) any special purpose entity established and wholly controlled by Developer to perform the design, development and financing of the Project.

Section 4.11. Estoppels. Each of the parties hereto agrees to provide to the other, or to such third parties as may be reasonably requested by the others, written estoppels from time to time certifying, among other matters, the continued viability of this Agreement, the absence of any defaults hereunder or, if defaults exist, specifying in detail the nature of such defaults), the status of the obligations of the parties each to the other, and such other matters as may reasonably be requested by the party requesting such estoppel certificate(s).

Section 4.12. No Third Party Beneficiaries; No Partnership or Joint Venture Created.

Nothing contained in this Agreement shall be deemed or construed as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or other association or relationship among Developer and Metro. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successor and permitted assigns, and shall not benefit in any manner any person not a party to this Agreement.

Section 4.13. No Abrogation of Legal Requirements. Nothing contained herein shall be construed to permit any party to violate any applicable law, regulation or code.

Section 4.14. Default.

A. If Developer materially breaches or defaults on its obligations under the Agreement or any of the documents incorporated herein, or in the reasonable judgment of Metro there has been a substantial decrease in Developer's capacity to complete the Project in accordance with the Schedule and other terms and conditions of this Agreement, , as evidenced by one or more substantial deviations from the Schedule not caused by force majeure, Metro may give written notice (with a copy of said notice being given to any lender of Developer) that remedial action must be taken within 30 calendar days. Developer shall correct such breach or default within 30 days after receipt of such written notice. If the default is not reasonably curable within 30 days, then Developer may continue to cure the default or breach so long as Metro is reasonably satisfied that sufficient progress is being made toward a cure. If such action is not taken within the 30 day period, then Metro may terminate the Agreement by giving written notice to Developer at least 10 days before the effective date of termination.

B. If Metro materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, Developer may give written notice to Metro that remedial action must be taken within 30 calendar days. Metro shall correct such breach or default within 30 days after Metro's receipt of such written notice. If the default is not reasonably curable within 30 days, then Metro may continue to cure the default or breach so long as Developer is reasonably satisfied that sufficient progress is being made toward a cure. If such action is not taken within the 30 day period, then Developer may terminate the Agreement by giving written notice to Metro at least 10 days before the effective date of termination.

Notwithstanding any provision of this Agreement to the contrary, the parties hereby agree in any action hereunder against the other to seek recovery only of actual damages incurred, and each party waives any right to recover punitive and/or consequential damages as a result of any event of default by the other party under this Agreement. In the event of a default by Developer prior to Project completion, Metro will negotiate a work out with Developer and/or seek new/additional development partners to complete the Project. In the event of a default by Metro, Metro shall use best efforts to assist Developer in recouping the costs associated with (i) obtaining land use approvals for the Property, (ii) sitework on the Property, and (ii) any improvements to the Property, as part of a future development of the Property.

If this Agreement is terminated, such termination shall not in any way affect any rights set forth in this Agreement that by their terms survive the termination or expiration.

Section 4.15. Binding Effect. Each of the parties hereto covenants and warrants that (i) it is duly authorized to transact business in the Commonwealth of Kentucky, (ii) the person executing this Agreement on behalf of the party is duly authorized by the party to sign and execute this Agreement on its behalf, (iii) this Agreement is a valid and binding obligation on the party and enforceable in accordance with its terms, and (iv) it is the intention of each of the parties to this Agreement that it shall be binding and legally enforceable in accordance with its terms.

IN TESTIMONY WHEREOF, witness the signatures of the authorized representatives of the parties hereto as of the day and year first written above.

METRO:

**LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT**

Dated: 12/21/2021

By: Ellen M. Neson, Deputy Mayor
Greg Fischer, Mayor

DEVELOPER:

UPPT, LLC

Dated: 12/21/2021

By: [Signature]
Title: My Partner

Approved as to form and legality:

Michael J. O'Connell
Jefferson County Attorney

By: Diana M. Fyson
Assistant Jefferson County Attorney

First Trust Centre
200 S. Fifth Street, Suite 300N
Louisville, KY 40202
(502) 574-0129

EXHIBIT A

(Metro Property Description)

<u>Parcel Address</u>	<u>Parcel #</u>
810 Barret Avenue	021J0130
850 Barret Avenue	021J0013
1235 E. Breckinridge Street	021J0114

EXHIBIT B

(LMHA Property Description)

Parcel Address

Parcel #

768 Barret Avenue

021J0090

EXHIBIT C
PLAN

EXHIBIT D

SCHEDULE

Except as otherwise provided in this Agreement, no date set forth in this Schedule shall be changed by a party unless such party shall have obtained prior written approval from the other party to the Agreement, which approval shall not be unreasonably withheld, conditioned or delayed.

<u>Action Item</u>	<u>Date</u>
Developer submits schematic plans sufficient to obtain zoning approvals for the Project to Louisville Forward	120 days from the date of this Agreement
Louisville Forward approves schematic plans and authorizes Developer to move forward with approvals	15 days after receipt
Processes to obtain Municipal Approvals initiated	60 days after schematic plans approved
Contingency Period complete	270 days from the date of this Agreement
Deadline to receive Municipal Approvals	December 31, 2022
Schedule to be updated with timeline for construction and substantial completion of the apartment component (13), boutique hotel, conference center and associated associated parking (10a), office building and associated parking (10b), and Town Green (park, amenities, Debarr Street extension and retail) (11).	30 days after Municipal Approvals received
Developer submits application for all permits necessary to commence environmental remediation and demolition of 850 Building, LMPD/HUD Building, Hospital (12) and selective demolition of physical plant building (14)	120 days after Municipal Approvals received
Regulatory authorities to issue all permits to commence environmental remediation and demolition	30 days after receipt
Developer to complete environmental and demolition activities	15 months after permits issued

As used herein, "Substantial completion" means substantial completion of the construction of the applicable improvements, excluding punch list items, site work, such as landscaping and paving,

any tenant improvements and any improvements that are to be constructed by or for a governmental authority.

EXHIBIT E

INSURANCE REQUIREMENTS

I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Developer shall indemnify, hold harmless, to the extent permitted by law, and defend Metro, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from Developer's (or Developer's Subcontractors, if any) performance or breach of the Agreement provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the intentional negligent act or omission of Metro, its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

II. INSURANCE REQUIREMENTS

Prior to Developer commencing this Agreement, Developer shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the Commonwealth of Kentucky. All insurance required under this Agreement must be obtained and copies of policies or certificates thereof shall be submitted to and approved by Metro (who may request review by the Metro's Risk Management Division) prior to this Agreement taking effect.

Without limiting Developer's indemnification requirements, it is agreed that Developer shall maintain in force at all times during this Agreement the following policy or policies of insurance covering its operations.

A. The following clauses shall be added to Developer's Commercial General Liability Policy:

1. "Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the Agreement."

B. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the Agreement (and such minimum limits shall not limit access to the full amount of insurance available, whether through primary, excess, or umbrella policies) on Developer's or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

2. WORKERS' COMPENSATION (if applicable): insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and Employers' Liability - \$100,000 Each Accident/\$500,000 Disease – Policy Limit /\$100,000 Disease – Each Employee.

III. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to Developer is submitted to and approved by Metro's Risk Management Division.

IV. MISCELLANEOUS

A. Developer shall procure and maintain insurance policies as described herein and for which Metro shall be furnished Certificates of Insurance upon the execution of the Agreement. The Certificates shall include provisions stating that the policies may not be cancelled or non-renewed, without Metro having been provided at least 30 days written notice. The Certificates shall identify the Agreement to which they apply and shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Agreement, renewal Certificates of Insurance shall be furnished to Metro 30 days before the expiration date.

B. Certificates of Insurance, as required above shall be furnished to:

Louisville/Jefferson County Metro Government
Finance Department, Risk Management Division
611 West Jefferson Street
Louisville, KY 40202

C. Developer shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions of Developer's insurance coverage) in coverage as required above, Developer shall notify Metro's Risk Management Division within two (2) business days. If Developer fails to notify Metro as required by this Agreement, Developer agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by Metro, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.

D. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Developer hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Developer.